IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 248 OF 2005
ALONGWITH
SECOND APPEAL NO. 250 OF 2005

Ravaso Bapu Sankpal ... Appellant

V/s

Vasant Shankar Khomane & anr. ... Respondents

Mr. Pratap Patil for the appellant (in both appeals).

Mr. V.B. Rajure for Respondent No.1 (in both appeals).

CORAM: P.V. KAKADE, J.

DATED: 17TH AUGUST, 2005

P.C.:

1. Both these appeals are aimed against the judgment and order passed by the Addl. District Judge, Kolhapur dated 30.4.2004 whereby R.C.A. Nos. 531 of 2003 and 532 of 2003 were allowed and judgment and decree passed by the Trial Court was set aside and R.C.S. No. 28 of 1999 came to be decreed whereby the defendant in R.C.S. No. 28 of 1999 was perpetually restrained from dismissing the plaintiffs' possession of the suit land. Consequently, R.C.S. No. 210 OF 2000 came to be dismissed. The said order was passed against the

judgment and order passed by the Civil Judge, Jr.Divn., Panhala, who had dismissed R.C.S. No. 28 of 1999 and decreed R.C.S. No. 210 of 2000.

2. I have heard the learned counsel for both parties. Perused the record.

3. The Trial Court had disposed of these suits by common judgment. R.C.S. No. 28 of 1999 was filed by one Vasant Shankar Khomane and Jaywant Shankar Khomane against the present appellant Ravaso Bapu Sankpal in respect of land of Gat No. 1101 at Kasba Satva, Tal. Panhala, Dist. Kolhapur, on the ground that the suit property was owned by father of defendant Bapu Rau Sankpal and after of Bapu, family members were in need of money and, therefore, they delivered the possession of the suit property on 14.6.1973 for Rs.2500/- to plaintiffs' father. It was agreed between them that defendant has right to get reconveyed the suit property after 5 years and within 10 years on repayment of the money and in case they fails to get reconveyed the land, the sale deed become absolute. It was the case of the plaintiff that defendants were in need of money and accepted further payment of Rs.2500/- and executed another document creating charge of the suit property.

Since the sale deed, plaintiff is enjoying the suit property as a owner and it is further averred that defendants are not concerned with the suit property. and hence the suit for injunction came to be filed.

Defendants contested the suit challenging inter-alia all the allegations made in the plaint and sought dismissal of the suit.

4. R.C.S. No. 210 of 2000 was filed by the present appellant Ravaso Bapu Sankpal against Vasant Shankar Khomane and Jayawant Shankar Khomane for declaration and perpetual injunction in respect of the same suit property. Both the suits were contested.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff failed to prove lawful possession and the ownership in the suit property and, therefore, was not entitled for perpetual injunction. In another suit, the present plaintiff-defendant was held to be in possession of the suit property by virtue of his ownership title and was further held that defendant i.e. present appellant had obstructed the possession in the suit property of the respondent and hence the perpetual injunction came to be

issued.

6. The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both parties, adjudicated the dispute in aforesaid manner holding the Khomane brothers had proved their lawful possession over the suit land on the date of filing of the suit and the present appellant had not proved that he had obtained valid and legal title on the basis of registered sale deed which was executed by Vilas and, therefore, it was held that the present appellant was not entitled for injunction. On the other hand, the present respondents were held entitled for injunction against the present appellant and hence the proceedings came to be adjudicated accordingly. Hence the present appeal.

7. At the outset, it may be noted that, there is absolutely no substantial question of law involved in these appeals. The learned appellate Court has appreciated the factual aspects of the evidence in proper perspective and there is absolutely no reason to interfere with the decided aspects which are based on facts proved on record. It is needless to mention that,

when the lower appellate Court, which is a last Court of fact, has adjudicated the dispute on the basis of available evidence and when it is found that such adjudication is reasonable and legal, then there is absolutely no reason to interfere with by the High Court under Sec. 100 of the C.P.C. In other words, in the present case before us, I am totally satisfied that the lower appellate Court Judge has rightly decided all the issues involved and hence there is no merit in the appeals.

8. In the result, both appeals stand dismissed with no order as to costs. Consequently, Civil Application No. 490 of 2005 in Second Appeal No. 248 of 2005 and Civil Application No. 497 of 2005 in Second Appeal No. 250 of 2005 also stand dismissed with no order as to costs.

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